

AMENDED IN ASSEMBLY APRIL 19, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 2891

Introduced by Assembly Member Frommer

February 20, 2004

~~An act relating to employment.~~ *An act to add Chapter 2 (commencing with Section 1600) to Part 6 of Division 2 of the Labor Code, relating to professional employer organizations.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2891, as amended, Frommer. Professional employer organizations.

Existing law, the Employment Agency, Employment Counseling, and Job Listing Services Act, regulates employment agencies, employment counseling services, and job listing services, as defined, but expressly excludes any person who provides any of these services and charges fees exclusively to employers for those services. Existing law does not regulate human resource management businesses.

This bill would ~~state the intent of the Legislature that professional employer organizations be properly recognized and regulated~~ *define a professional employer organization as any person whose business is entering into professional employer agreements, as defined, with clients. The bill would provide that a professional employer agreement shall have no effect on existing collective bargaining agreements.*

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

~~SECTION 1. The Legislature hereby finds and declares all of~~
SECTION 1. Chapter 2 (commencing with Section 1600) is
added to Part 6 of Division 2 of the Labor Code, to read:

CHAPTER 2. CALIFORNIA PROFESSIONAL EMPLOYER
ORGANIZATIONS

1600. *The following definitions apply for the purposes of this chapter:*

(a) *“Client” means a person who enters into a professional employer agreement with a professional employer organization.*

(b) *“Person” means an individual, an association, a company, a firm, a partnership, a corporation, or any other form of legally recognized entity.*

(c) *“Professional employer agreement” means a written contract that meets each of the following criteria:*

(1) *The contract includes a provision whereby a professional employer organization expressly agrees to provide professional employer services for all or a majority of the employees providing services for the client.*

(2) *The contract is intended to be ongoing rather than temporary in nature.*

(3) *Employer responsibilities for worksite employees are expressly allocated by and between the professional employer organization and the client in the contract.*

(4) *The professional employer organization expressly assumes the rights and responsibilities as required by this chapter in the contract.*

(d) *“Professional employer organization” means any person whose business is entering into professional employer agreements with clients. The term “professional employer organization” shall include “professional employer groups.” In determining whether the professional employer organization employs all or a majority of the employees of a client, any person employed pursuant to the terms of the professional employer agreement after the initial placement of client employees on the payroll of the professional employer organization shall be included. The term “professional employer organization” is to be liberally construed so as to*

1 include any and all arrangements meeting the criteria set forth in
2 this chapter; by whatever term known, including, but not limited to,
3 employee leasing, employee lease back arrangements, or similar
4 administrative outsourcing, except that temporary help firms and
5 employment agencies that do not engage in professional employer
6 services shall not be deemed to be professional employer
7 organizations for purposes of this chapter.

8 (e) “Professional employer organization group” shall mean
9 any two or more entities providing professional employer services
10 held under common control, whether exercised by direct or indirect
11 direction of management and policies, by ownership of voting
12 securities, by contract, or otherwise. Control is presumed to exist
13 if any natural person directly or indirectly owns, controls, or holds
14 the power to vote or holds proxies representing 25 percent or more
15 of the voting securities of any other person.

16 (f) “Temporary help firm” means a business that recruits and
17 hires its own employees, and assigns those employees to perform
18 work at or services for other organizations to support or
19 supplement the other organization’s workforce, or to provide
20 assistance in special work situations, including, but not limited to,
21 employee absences, skill shortages, and seasonal workloads, or to
22 perform special assignments or projects. A temporary help firm
23 shall not be deemed to be a professional employer organization for
24 the purposes of this chapter.

25 (g) “Worksite employee” means a person subject to the
26 professional employer agreement between the professional
27 employer organization and the client. “Worksite employee” may
28 also include the client’s officers, directors, shareholders, or
29 partners, to the extent these persons act as operational managers
30 or perform services for the client.

31 1601. A professional employer agreement shall have no effect
32 on existing collective bargaining agreements.
33 ~~the following:~~

34 ~~(a) Professional employer organizations provide a valuable~~
35 ~~service to commerce and the citizens of California by increasing~~
36 ~~the opportunities of employers to develop cost-effective methods~~
37 ~~of satisfying their personnel requirements and providing~~
38 ~~employees with access to certain employment benefits that might~~
39 ~~not otherwise be available to them.~~

1 ~~(b) It is the intent of the Legislature that professional employer~~
2 ~~organizations operating in California be properly recognized and~~
3 ~~regulated by the state.~~

4 ~~(c) Any allocation of employer duties and responsibilities~~
5 ~~pursuant to this act shall preserve all rights to which covered~~
6 ~~employees would be entitled under a traditional employment~~
7 ~~relationship.~~

